

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

v.

WILLIAM E. BARONI, JR., and BRIDGET ANNE KELLY,

Defendants.

Hon. Susan D. Wigenton

Docket No.: Cr. 15-193 (SDW)

*Electronically Filed*

**MEMORANDUM OF LAW IN SUPPORT  
OF UNOPPOSED MOTION FOR BAIL**

On Friday, June 28, 2019, the Supreme Court granted Bridget Anne Kelly's petition for a writ of certiorari and will review the Court of Appeals for the Third Circuit's judgment affirming the convictions of Kelly and William E. Baroni, Jr. in this case. Baroni—for reasons discussed below—did not himself file a petition, but he timely identified himself to the Supreme Court and the parties as a respondent in the matter and filed a brief in support of Kelly's petition.

Accordingly, pursuant to Supreme Court Rule 12.6, Baroni will be a party to the Supreme Court case with full rights to participate and receive any relief from the Supreme Court's ultimate decision. Based on the Supreme Court's decision to hear the case, Baroni respectfully moves for immediate release on bail from the sentence he is currently serving, pending the outcome of the Supreme Court case. The United States, through Mark E. Coyne, Attorney for the United States acting through authority conferred by Title 28, United States Code, Section 515, does not oppose Baroni's release on bail subject to the conditions this Court had previously imposed.

Procedural Background

Baroni's and Kelly's convictions in this case were partially affirmed and partially reversed by the Third Circuit by decision dated November 27, 2018, with a further instruction that the case be remanded and the defendants resentenced. Thereafter, on February 5, 2019, the Third Circuit denied Kelly's petition for rehearing, thus commencing the 90-day period within which Kelly and Baroni could petition the Supreme Court for a writ of certiorari. Kelly filed her petition on February 12, 2019.

This Court resentenced Baroni on February 26, 2019, sentencing him principally to a term of imprisonment of 18 months. Baroni did not seek bail, instead intending to begin (and subsequently beginning) service of his sentence.

Following resentencing, Baroni was still well within his time to petition the Supreme Court for a writ of certiorari. However, Baroni was aware that (1) the briefing schedule that had been established by Kelly's earlier petition would permit the Supreme Court to rule on the petition in June, prior to the Supreme Court's lengthy summer recess, and (2) if Baroni filed his own petition, he would restart the briefing schedule on both petitions and the Supreme Court would not render its decision until months later in October. Moreover, Baroni could not maintain Kelly's briefing schedule simply by joining her petition, because Supreme Court Rule 12.4 states that a party may not join another party's petition after that petition has already been filed.

Accordingly, in order not delay the Supreme Court's decision on the certiorari petition—delay during which Baroni would have had to spend July, August, and September in prison awaiting the Supreme Court's decision—Baroni invoked Supreme Court Rule 12.6. That Rule provides that “[a]ll parties to the proceeding in the court whose judgment is sought to be

reviewed are deemed parties” to a case in which the Supreme Court grants certiorari, and are “considered respondents” in the case with the right to participate in the case and to receive any relief from the Supreme Court’s decision in the case, so long as they “ensure that counsel of record for all parties receive notice” of their intention. Supreme Court R. 12.6; *see also Black v. United States*, 561 U.S. 465, 468 n.1 (2010) (finding that a defendant who did not himself file a petition for a writ of certiorari was still “a respondent in support of petitioners who qualifies for relief under this Court’s Rule 12.6”). Baroni provided all counsel that notice on March 4, 2019, and, thereafter, on March 15, 2019, Baroni filed a brief—essentially indistinguishable from the certiorari petition he would otherwise have filed—in support of Kelly’s petition for certiorari, thereby maintaining the briefing schedule that would allow the Supreme Court to rule on the petition before its summer recess.

Baroni surrendered to begin service of his sentence on April 9, 2019. On June 28, 2019, while he is serving his sentence, the Supreme Court granted Kelly’s certiorari petition, through which the Supreme Court will review the Third Circuit’s judgment in Kelly’s and Baroni’s case.

Consent Request for Bail

In light of the Supreme Court’s action, Baroni respectfully requests that this Court immediately release him on bail, pursuant to the same bail conditions that were in place prior to his surrender to serve his sentence. The Government does not oppose this request, although the parties disagree slightly on the jurisdictional basis for granting Baroni bail: Title 18, United States Code, Section 3143(b) or Title 28, United States Code, Section 2255. Baroni sets forth the disagreement below, but has no objection to the Court resolving the matter in whatever manner results in the quickest possible issuance of an order for his release on bail.

With respect to the standards for bail pending appeal set forth in Title 18, United States Code, Section 3143(b), the Government agrees (as it has in the past) that Baroni is not a risk of flight or danger to the community. The Government also agrees that the Supreme Court's decision to hear Kelly's and Baroni's case means that the case necessarily raises a substantial question of law that could result in reversal or an order for a new trial within the meaning of Section 3143(b) were Kelly and Baroni to prevail before the Supreme Court. *See* 18 U.S.C. § 3143(b).

The Government is not certain, however, under the procedural posture set forth above, whether Baroni falls within the class of people who can obtain bail under Section 3143. Section 3143 applies to a defendant "who has filed an appeal or a petition for a writ of certiorari," 18 U.S.C. § 3143(b)(1), and Baroni is not the defendant who actually "filed" the petition for a writ of certiorari. Baroni maintains that even with the slight procedural peculiarity in this case, the plain purpose of the bail-pending-appeal statute is to permit the release of defendants like Baroni who are on direct appeal and have a substantial chance that the term of imprisonment they would otherwise be serving will be vacated by the Court of Appeals or the Supreme Court. In other words, it would make little sense for the statute to distinguish for purposes of bail between a defendant whose petition for certiorari is granted and a defendant who is a party to a case in which a petition for certiorari has been granted. Moreover, even under the literal terms of the statute, Baroni is still a defendant "who has filed an appeal" to the Third Circuit that raises a substantial question of law that could result in reversal or an order of a new trial because the Supreme Court could return the case to the Third Circuit with those instructions.

In any event, if the Court has any concerns about the applicability of Section 3143, this Court can treat this motion as a petition under Title 28, United States Code, Section 2255 and

release Baroni on bail in connection with that petition. *See Adams v. United States*, No. 16-6780 (AET), 2018 WL 826376, at \*2 (D.N.J. Feb. 9, 2018) (“District courts have the discretion to order bail on bond pending the outcome of § 2255 proceedings.”); *Cherek v. United States*, 767 F.2d 335 (7th Cir. 1985) (recognizing that district courts in section 2255 proceedings have inherent power to grant bail). The Government agrees that, under the circumstances here, this Court can grant Baroni bail pending disposition of a § 2255 motion.

In sum, the Government does not oppose Baroni’s request to be released forthwith on bail pending the Supreme Court’s decision in his case. The parties diverge only in the appropriate mechanism. While Baroni believes that Section 3143 applies, and the Government agrees that Baroni meets the substantive standards of that statute, the Government is uncertain whether the statute is available to defendants in Baroni’s specific procedural posture. To the extent the Court shares that uncertainty, Baroni and the Government agree that the Court can treat this motion as a Section 2255 petition and order him released on bail forthwith in connection with that petition. A proposed order is attached hereto.

Conclusion

For the reasons set forth above, Baroni respectfully requests that the Court order his release on bail forthwith by executing the attached proposed order.

Dated: July 1, 2019

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Cc: All counsel of record (via ECF)